

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.R., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, St. Rose, LA, Employer )

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**Docket No. 09-1947  
Issued: April 13, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 27, 2009 appellant, through her attorney, filed a timely appeal from a July 1, 2009 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant established that she sustained a left knee injury on September 11, 2008 in the performance of duty, as alleged.

**FACTUAL HISTORY**

On November 19, 2008 appellant, then a 51-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2008 she twisted her left knee while conducting a physical pat down of a passenger. She claimed that she knelt down to complete the screening, with her left knee on the floor, and that she twisted her left knee when

she stood up. The employing establishment controverted the claim stating that appellant did not report the injury until five weeks later and after her knee began hurting at the gym. It noted that there were no witnesses to the claimed incident.<sup>1</sup>

By letter dated November 21, 2008, the Office advised appellant of the deficiencies in her claim and requested that she provide additional factual and medical evidence.

In a November 7, 2008 medical report, Dr. Eileen C. Lynch-Ballard, a Board-certified pediatrician, general, reported appellant's statement that on September 11, 2008 she twisted her knee at work while standing up. Appellant's pain began gradually and she did not seek medical treatment for nearly two months. Physical examination revealed mild swelling of the suprapatellar, prepatellar and popliteal areas and an antalgic gait favoring the left leg. Range of motion of the knee was normal but with pain and palpation revealed tenderness of the lateral patellar joint line and popliteal areas. Dr. Lynch-Ballard diagnosed knee pain, knee strain and knee lateral collateral ligament strain. She stated that appellant sustained a musculoskeletal injury requiring physical therapy. Dr. Lynch-Ballard placed appellant on light duty and provided work restrictions. In medical reports dated November 14 through December 12, 2008, she continued to report appellant's complaints of pain, which was improving through physical therapy and treatment. Dr. Lynch-Ballard diagnosed knee strain and pain and noted limited range of motion of the knee and tenderness to palpation on examination. She continued to place appellant on light duty and provide work restrictions.

Appellant further submitted a December 5, 2008 report from a physical therapist addressing her left knee condition.

By decision dated December 22, 2008, the Office denied appellant's claim on the grounds that she did not submit sufficient factual or medical evidence to establish that she sustained an injury on September 11, 2008.

In medical reports dated December 19, 2008 and January 7, 2009, Dr. Lynch-Ballard reported appellant's continuing complaints of left knee pain, which were gradually resolving with physical therapy. She continued to provide work restrictions and placed appellant on light duty. On December 30, 2008 Dr. Lynch-Ballard stated that appellant's left knee symptoms were slowly improving but that she was experiencing left foot pain, which appellant attributed to favoring the right knee after the left knee injury. She diagnosed left foot sprain, disruption of the medial arch and resolving left knee injury. Dr. Lynch-Ballard subsequently diagnosed bilateral arch pain of the feet. She opined that, within a reasonable degree of medical probability, the diagnosed conditions were causally and proximately related to appellant's work-related injury. Dr. Lynch-Ballard stated that the mechanism of injury and the description of the incident were consistent and that it was more likely than not that the diagnoses were the result of the work-related injury.

In a December 16, 2008 statement, appellant claimed that she injured her left knee after rising from a kneeling stance for a pat down at work on September 11, 2008. She contended that

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<sup>1</sup> Appellant previously filed claims for a June 15, 2004 right shoulder injury, under Office file number xxxxxx067, and an October 13, 2006 left shoulder injury, under Office file number xxxxxx799.

she did not immediately seek medical attention because she believed her pain would eventually subside and she did not want another work-related injury.

On June 12, 2009 the employing establishment submitted a statement controverting appellant's claim primarily due to her delay in filing. It submitted a November 6, 2008 statement from appellant's supervisor, who stated that appellant previously mentioned that she had hurt her knee while bending during a pat down.

On January 7, 2009 appellant, through her attorney, filed a request for a telephonic hearing before an Office hearing representative. The hearing took place on April 16, 2009 where appellant testified regarding the factual circumstances of her alleged employment injury.

By decision dated July 1, 2009, an Office hearing representative affirmed the December 22, 2008 decision as modified. She found that appellant's statements were consistent with those of her supervisor and that she adequately explained her reasons for the delay in filing her claim. Thus, appellant established that the September 11, 2008 incident occurred as alleged. However, the Office hearing representative also found that the medical evidence was still insufficient to establish the claim as Dr. Lynch-Ballard did not provide an opinion that appellant's knee condition was related to her employment.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> including that she is an "employee" within the meaning of the Act<sup>4</sup> and that she filed her claim within the applicable time limitation.<sup>5</sup> The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *See M.H.*, 59 ECAB \_\_\_ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

<sup>5</sup> *R.C.*, 59 ECAB \_\_\_ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

<sup>6</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

The Office accepted that on September 11, 2008 appellant twisted her left knee while conducting a pat down in her capacity as a transportation security officer. The issue is whether she sustained a causally-related injury. The Board finds appellant has not met her burden of proof.

In support of her claim, appellant submitted medical reports dated November 7, 2008 through January 7, 2009 from Dr. Lynch-Ballard. On November 7, 2008 Dr. Lynch-Ballard reported appellant's statement that she twisted her knee on September 11, 2008 and that she experienced a gradual onset of pain. She diagnosed left knee pain, strain and lateral collateral ligament strain. In a December 30, 2008 report, Dr. Lynch-Ballard stated that appellant was experiencing foot pain as a consequence of her left knee injury and provided additional diagnoses of left foot sprain, disruption of the medial arch and resolving left knee injury. She opined that, with a reasonable degree of medical probability, the diagnosed conditions were causally and proximately related to appellant's work-related injury. Dr. Lynch-Ballard stated that the mechanism of injury and the description of the incident were consistent and more likely than not the diagnosed conditions were the result of the work-related injury.

The Board finds that Dr. Lynch-Ballard's reports are insufficient to establish appellant's claim. Although Dr. Lynch-Ballard opined that appellant's diagnosed conditions were related to her work-related injury, she did not provide any rationale to support her findings of causal relationship. She did not specifically describe how the mechanism of standing up after a pat down caused appellant's left knee condition. It is not clear how Dr. Lynch-Ballard found that appellant's condition was caused by her employment, particularly in light of the fact that she did not treat appellant until several months after the September 11, 2008 employment incident. As she did not provide a rationalized medical opinion describing how appellant sustained a left knee

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<sup>8</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

condition due to the September 11, 2008 incident, her opinion on causation is of diminished probative value.<sup>10</sup>

The only other medical evidence of record is a December 5, 2008 report from a physical therapist. As a physical therapist is not included in the definition of a physician under the Act, this report is also of diminished probative value.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained a left knee injury on September 11, 2008 in the performance of duty, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See *G.G.*, 58 ECAB 389 (2007); *Victor J. Woodhams*, *id.*

<sup>11</sup> Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See also *Jerre R. Rinehart*, 45 ECAB 518 (1994).